

## Surface Transportation Board, DOT

## § 1011.4

extent that the system of records pertains to the enforcement of criminal laws. Complaint and investigatory materials compiled by the Board's Office of Inspector General for law enforcement purposes also are exempt from the provisions of 5 U.S.C. 552a and the regulations of this part, pursuant to 5 U.S.C. 552a(k)(2).

[41 FR 3087, Jan. 21, 1976, as amended at 58 FR 15291, Mar. 22, 1993; 58 FR 28520, May 14, 1993]

### PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

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AUTHORITY: 5 U.S.C. 553; 31 U.S.C. 9701, and 49 U.S.C. 701, 721, 11144, 14122, and 15721.

SOURCE: 58 FR 29357, May 20, 1993, unless otherwise noted.

#### § 1011.1 General.

(a) This part describes the organization of the Board, and the assignment of jurisdiction and responsibilities to the Board, individual Board Members or employees, and employee boards.

(b) As used in this part, *matter* includes any case, proceeding, question, or other matter within the Board's jurisdiction; and *decision* includes any decision, ruling, order, or requirement of the Board, an individual Board Member or employee, or an employee board.

#### § 1011.2 The Board.

(a) The Board reserves to itself for consideration and disposition:

(1) All rulemaking and similar proceedings involving the promulgation of rules or the issuance of statements of general policy.

(2) All investigations and other proceedings instituted by the Board, ex-

cept as may be ordered in individual situations.

(3) All administrative appeals in a matter previously considered by the Board.

(4) All other matters submitted for decision except those assigned to an individual Board Member or employee or an employee board.

(5) Except for matters assigned to the Chairman of the Board under § 1011.5(a)(6),

(i) The determination of whether to reconsider a decision being challenged in court;

(ii) The disposition of matters that have been the subject of an adverse decision by a court; and

(iii) The determination whether to file any memorandum or brief or otherwise participate on behalf of the Board in any court.

(6) The disposition of all matters involving issues of general transportation importance, and the determination whether issues of general transportation importance are involved in any matter.

(7) All appeals of initial decisions issued by the Director of the Office of Proceedings under authority delegated at § 1011.8(c). Appeals must be filed within 10 days after service of the Director decision or publication of the notice, and replies must be filed within 10 days after the due date for appeals or any extension thereof.

(b) The Board may bring before it any matter assigned to an individual Board Member or employee or employee board.

#### § 1011.3 Divisions of the Board.

The Board may establish such divisions as it considers necessary to handle any matter before it.

#### § 1011.4 The Chairman, Vice Chairman, and Senior Board Member present.

(a)(1) The Chairman of the Board is appointed by the President as provided by 49 U.S.C. 10301(b). The Chairman has authority, duties, and responsibilities assigned under 49 U.S.C. 10301(f) and described in this part.

(2) The Vice Chairman is elected by the Board for the term of 1 calendar year.

(3) In the Chairman's absence, the Vice Chairman is Acting Chairman, and has the authority and responsibilities of the Chairman. In the Vice Chairman's absence, the Chairman, if present, has the authority and responsibilities of the Vice Chairman. In the absence of both the Chairman and Vice Chairman, the senior Board Member present, based on time of continuous service as a member of the Board, is Acting Chairman, and has the authority and responsibilities of the Chairman and Vice Chairman.

(b)(1) The Chairman is the executive head of the Board and has general responsibility for:

(i) The overall management and functioning of the Board;

(ii) The formulation of plans and policies designed to assure the effective administration of the Interstate Commerce Act and related Acts;

(iii) Prompt identification and early resolution, at the appropriate level, of major substantive regulatory problems; and

(iv) The development and use of effective staff support to carry out the duties and functions of the Board.

(2) The Chairman of the Board exercises the executive and administrative functions of the Board, including:

(i) The appointment, supervision, and removal of Board employees, except those in the immediate offices of Board Members other than the Chairman;

(ii) The distribution of business among such personnel and among administrative units of the Board; and

(iii) The use and expenditure of funds.

(3) In carrying out his functions, the Chairman is governed by general policies of the Board and by such regulatory decisions, findings, and determinations as the Board by law is authorized to make.

(4) The appointment by the Chairman of the heads of offices and bureaus is subject to the approval of the Board. All heads of offices report to the Chairman.

(c)(1) The Chairman presides at all sessions of the Board and sees that every vote and official act of the Board required by law to be recorded is accurately and promptly recorded by the

Secretary or the person designated by the Board for that purpose.

(2) Regular sessions of the Board are provided for by Board regulations. The Chairman may call the Board into special session to consider any matter or business of the Board. The Chairman shall convene a special session to consider any matter or business on request of a member of the Board unless a majority of the Board votes either not to hold a special session or to delay conference consideration of that item, or unless the Chairman finds that special circumstances warrant a delay. Notwithstanding the two immediately preceding sentences of this paragraph, on the written request of any member of the Board, the Chairman shall schedule a Board conference to discuss and vote on significant Board proceedings involving major transportation issues, and such conference shall be held within a reasonable time following the close of the record in the involved proceeding.

(3) The Chairman exercises general control over the Board's argument calendar and conference agenda.

(4) The Chairman acts as correspondent and speaks for the Board in all matters where an official expression of the Board is required.

(5) The Chairman brings any delay or failure in the work to the attention of the supervising Board Member, employee, or board, and initiates ways of correcting or preventing avoidable delays in the performance of any work or the disposition of any matter.

(6) The Chairman may appoint such standing or *ad hoc* committees of the Board as he considers necessary.

(7)[Reserved]

(8) The Chairman may reassign related proceedings to a board of employees and may remove a matter from an individual Board Member or employee or employee board for consideration and disposition by the Board.

(9) The Chairman may authorize any officer, employee, or administrative unit of the Board to perform a function vested in or delegated to the Chairman.

(10) The Chairman authorizes the institution of investigations on the

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Board's own motion, and their discontinuance at any time before hearing, except for investigations under 49 U.S.C. 10708.

(1) The Chairman approves for publication all publicly-issued documents by a bureau or office, except:

(i) Those authorized or adopted by the Board or an individual Board Member that involve decisions in formal proceedings;

(ii) Decisions or informal opinions of a bureau or office, or an initial decision of a hearing officer; and

(iii) Documents prepared for court cases or for introduction into evidence in a formal proceeding.

[58 FR 29357, May 20, 1993, as amended at 64 FR 53266, Oct. 1, 1999]

### § 1011.5 Delegations to individual Board Members.

(a) The following matters are referred to the Chairman of the Board:

(1) Entry of reparation orders responsive to findings authorizing the filing of statements of claimed damages as provided at 49 CFR part 1133.

(2) Extensions of time for compliance with orders and procedural matters in any formal case or pending matter, except appeals taken from the decision of a hearing officer on requests for discovery.

(3) Postponement of the effective date of orders in proceedings that are the subject of suits brought in a court to enjoin, suspend, or set aside the decision.

(4) Dismissal of complaints and applications on the unopposed motion of any party.

(5) Requests for access to waybills and to statistics reported under orders of the Board.

(6) Exercise of control over litigation arising under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), except for determinations whether to seek further judicial review of:

(i) A decision in which a court finds under 5 U.S.C. 552(a)(4)(F) that Board personnel may have acted arbitrarily or capriciously in improperly withholding records from disclosure; or

(ii) A decision in which a court finds under 5 U.S.C. 552a(g)(4) that Board

personnel acted intentionally or wilfully in violating the Privacy Act.

(7) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903 and the Board must find, under 49 U.S.C. 10904(b), that the public convenience and necessity require or permit the abandonment or discontinuance.

(8) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed.

(9) Designation in writing of employees authorized to inspect and copy records and to inspect and examine lands, buildings, and equipment pursuant to 49 U.S.C. 11144, 14122, and 15721.

(b) The following matters are referred to the Vice Chairman of the Board:

(1) Matters within the jurisdiction of the Accounting Board if certified to the Vice Chairman by the Board or if removed from the Board by the Vice Chairman.

(2) Matters involving the admission, disbarment, or discipline of practitioners before the Board under 49 CFR part 1103.

(3) In cases of calamitous visitation:

(i) Reduced rates authorization under 49 U.S.C. 10721;

(ii) Relief from the provisions of 49 U.S.C. 10730; and

(c) The Chairman, Vice Chairman, or any other Board Member to whom a matter is assigned under this part may certify such matter to the Board.

(d) The Chairman shall notify all Board Members that a petition for a stay has been referred to the Chairman for disposition under paragraphs (a) (2) or (3) of this section. The Chairman shall also inform all Board Members of the decision on that petition before service of such decision. At the request of a Board Member, made at any time before the Chairman's decision is served, the petition will be referred to the Board for decision.

[58 FR 29357, May 20, 1993, as amended at 62 FR 48955, Sept. 18, 1997; 62 FR 50883, Sept. 29, 1997]